

中国劳工通讯

China Labour Bulletin



## THROWAWAY LABOUR

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The exploitation of Chinese "trainees" in Japan

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**Research Reports**

# **Throwaway Labour**

**The exploitation of Chinese “trainees” in Japan**

[www.clb.org.hk](http://www.clb.org.hk)

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## **About China Labour Bulletin**

A non-governmental organization founded in Hong Kong in 1994, China Labour Bulletin has grown from a small monitoring and research group into a proactive outreach organization that seeks to defend and promote the rights of workers in China. We have extensive links and wide-ranging co-operative programs with labour groups, law firms and academics throughout China, as well as with the international labour movement.

Through these programs, we support the development of democratically-run trade unions, encourage respect for and enforcement of the country's labour laws, as well as the full participation of workers in the creation of civil society. We seek the official recognition in China of international standards and conventions providing for workers' freedom of association and the right to free collective bargaining.

CLB has an extensive research program and has published numerous reports in both English and Chinese on a wide range of key labour rights issues. All titles are listed at the end of this report and are available as downloadable PDFs on our website at [www.clb.org.hk](http://www.clb.org.hk). In addition, several reports are available in a bound edition.

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## Introduction

In the early 1900s, young women from poor rural families in Japan's Gifu prefecture crossed the mountainous Nomugi Pass to work in the silk factories of Okaya. They were forced to work long hours for low pay in oppressive conditions akin to indentured servitude. Their story was later immortalised in the 1979 feature film *Oh! The Nomugi Pass*, directed by veteran filmmaker Satsuo Yamamoto.

In the early 2000s, tens of thousands of young women from poor rural families in China crossed the East China Sea to work in labour intensive industries across Japan in conditions not far removed from those experienced by the Gifu workers. As the Chinese writer and critic Mo Bangfu noted in a 2008 essay, “You really would not expect to see Japan, which is now the world's second largest economy, acting out a reality series version of the movie *Oh! The Nomugi Pass*.”<sup>1</sup>

The reason for history repeating itself in Japan is not hard to find. Since the 1980s, Japan's manufactures have found it increasingly difficult to recruit workers locally, particularly for low-paid, labour-intensive jobs in the so-called 3K; *kitsui* (demanding), *kitanai* (dirty), and *kiken* (dangerous) industries. At the same time, China's economic reforms created a huge labour surplus in that country, which had to find employment somewhere.

In order to facilitate the movement of cheap and temporary Chinese labour to Japan, the Japanese government set up the Foreign Training and Technical Internship System, referred to in this report as the “trainee system,”<sup>2</sup> and the Chinese government encouraged

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<sup>1</sup> Mo Bangfu (莫邦富), 湖北女工被卖身现代“野麦岭”, 日中两公司想以身试法 (The prostituting of Hubei women workers – a modern “Nomugi Pass;” Both Japanese and Chinese companies try to defy the law), 日本新华侨报网 (*New Overseas Chinese in Japan News Network*), 6 September 2008.

<sup>2</sup> The term 研修生及技能实习生 (“trainees and technical interns”) is often shortened to 研修实习生 in Chinese (“trainees and interns”). The distinction between “trainees” and “interns” will be explained in Chapter One. However, where it is not crucial to make the distinction, the term “trainees” will be used for the sake of brevity.

the development of labour export companies, known colloquially as placement companies (派遣公司), which could place large numbers of Chinese workers abroad.

The trainee system, which allows Japanese companies to employ foreign workers for three years under the pretext of offering training, has to some extent alleviated Japan's labour shortage and helped ease the recessionary pressure on small and medium-sized enterprises. The Chinese government and the labour export companies have also benefited from the arrangement. The export of labour can be a highly profitable business for placement companies. It also makes local governments look good by creating job opportunities for workers in areas of high unemployment and facilitating the remittance of large sums of foreign currency into the local economy.

However, as numerous reports by Chinese, Japanese and international organizations have shown,<sup>3</sup> the one group that has received little benefit is the trainees themselves. They are routinely exploited by both the Chinese company that places them overseas and the Japanese firm they end up working for. They have to pay excessive fees and commissions just to get the job and, once in Japan, are often forced to work long hours for low pay in frequently hazardous conditions. Their freedom of movement and association are severely constrained and the accommodation and food provided by their employer is often substandard. Moreover, they are often forced to lie to Japanese labour inspectors about their wage levels and working conditions. Chinese trainees in Japan usually put up with these conditions because they run the risk of retaliation from their employer and the placement company if they file a complaint.

The aim of this China Labour Bulletin report is to analyse how this

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<sup>3</sup> Most recently, a Japanese human rights group and the United Nations Special Rapporteur on the human rights of migrants, both described aspects of the trainee system as akin to human trafficking. See *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante. Mission to Japan*, 21 March 2011, and Japan's trainee programme 'human trafficking': lawyer, *Agence France-Presse*, 23 July 2010.

system for supplying cheap Chinese labour developed over the last three decades, to examine in detail the problems trainees typically face, and to offer suggestions on how the system might be improved. It is divided into four chapters: The first is a historical and systematic overview of the laws and government policies related to the export of Chinese labour to Japan; Chapter Two explains the process by which Chinese trainees are recruited and the fees they have to pay, Chapter Three provides a detailed picture of trainees' living and working conditions in Japan, and Chapter Four analyses the legal and practical options trainees have if their rights are violated by their employer or the Chinese company that placed them with that employer.

The report uses a wide array of sources, including Chinese and Japanese laws, regulations and policy documents, surveys, research reports and media reports over the last decade or more. It also uses detailed personal interviews conducted by CLB with five former trainees<sup>4</sup> to provide in-depth and intimate accounts of the living and working conditions, and the problems all too often faced by trainees both in Japan and on their return to China.

The Chinese and Japanese governments have now recognised many of the inherent flaws in the system and the lack of protection it affords trainees. They have taken some steps to rectify those flaws. However, much more needs to be done. As the immediate aftermath of the 11 March earthquake and tsunami has shown, unless additional reforms are made, many Japanese industries could face a severe and prolonged labour shortage.

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<sup>4</sup> All of the interviewees were involved in disputes with their employer and/or employment agent. CLB provided them with legal assistance as part of its labour rights litigation programme. At the request of the interviewees, we have withheld their names and exact locations. Among the five interviewed, Ms L, Ms T, Ms Z, and Ms Zh were from the Chengdu area of Sichuan. From November 2006 to November 2009, they were placed by the Sichuan XX Foreign Economic Cooperation Company as trainees at the Yamagata XX Sewing Factory. Mr J was from the north-eastern province of Liaoning. From September 2006 to September 2009, he was placed by the Dalian XX Economic and Technical Cooperation Company as a trainee at XX Foods Co. Ltd. in Japan's Ibaraki prefecture. The interviews were conducted in March 2010.



## After 11 March

When the devastating earthquake and tsunami hit the east coast of Japan's main Honshu Island on 11 March 2011, there were 22,670 Chinese trainees employed in the four prefectures worst affected. On 22 March, China's Ministry of Commerce announced that all but nine of them had been accounted for.<sup>5</sup>

In the days and weeks following the disaster, many stories began to emerge of the incredible heroism and sacrifice of Japanese employers who risked everything to ensure their employees made it to safety after the tsunami alert was sounded. All of the 100 or so trainees employed in the town of Onagawa in Miyagi prefecture, which lost nearly half its population of 10,000 in the disaster, were guided to safety. Most notably, Mitsuru Sato, a manager at the Sato Fisheries Corporation, personally rescued 20 trainees before going back for his wife and daughter. One of the trainees told the *Global Times* that she saw Sato climb on to a roof before being carried away by the torrent of water. Another trainee led to safety by company executives said, "I dare not imagine what would have happened if they hadn't helped us."<sup>6</sup>

In the aftermath of the disaster, and with the continuing threat of radiation from the Fukushima nuclear power plant, tens of thousands of trainees from all over Japan returned home, many with the assistance of the Chinese government. The Japan International Training Cooperation Organization (JITCO) estimated that by mid-April some 70 percent of its more than 150,000 trainees had left the country.<sup>7</sup> The exodus of Chinese trainees left hundreds of small businesses with an acute labour shortage. The Japan Textile Federation estimated in late April that 30,000 of the 40,000 trainees

<sup>5</sup> 商务部：中国9名在日本研修生仍失去联系 (Ministry of Commerce: Nine Chinese trainees in Japan still unaccounted for) 中新社 (*China News Service*) 22 March 2011.

<sup>6</sup> Japanese worker missing after saving 20 Chinese students from tsunami, *Global Times*, 17 March 2011.

<sup>7</sup> Drake Bennett, The Flight of Japan's Immigrant Workers, *BusinessWeek*, 21 April 2011.

employed in the sewing industry had gone home.<sup>8</sup> If the trainees did not return, the federation said, the industry would have to drastically cut back production. In the meantime, textile manufacturers have been forced to hire local staff at much higher wage rates in order to meet production targets. The economist Junichi Goto told *BusinessWeek*: “When the reconstruction starts and demand increases, the exodus of foreign workers will have an extremely serious effect.”<sup>9</sup>

The labour shortage led to renewed calls for Japan to adopt more open and fairer approaches to foreign labour.<sup>10</sup> The question being asked by many in Japan is: why were Chinese trainees so quick to leave and why are they now so reluctant to return?

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<sup>8</sup> Industries left short-handed after foreign workers flee Japan following nuke accident, *The Mainichi Daily News*, 25 April 2011.

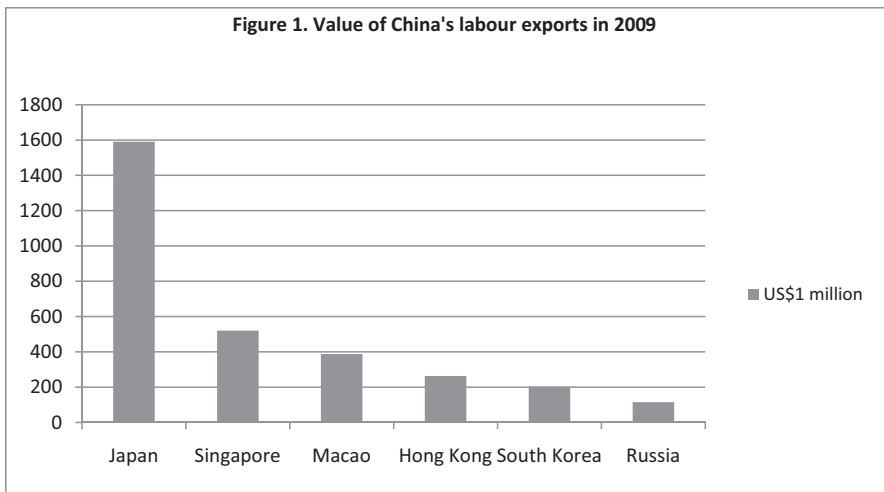
<sup>9</sup> Drake Bennett, The Flight of Japan’s Immigrant Workers, *BusinessWeek*, 21 April 2011.

<sup>10</sup> Flight of Chinese workers leaves Japanese businesses in the lurch, *Los Angeles Times*, 25 March 2011.



## Chapter One: An overview of labour policies in China and Japan

For several years now, Japan has been by far the largest international market for Chinese labour. In 2009, the value of labour exports to Japan totalled US\$1.59 billion, according to Chinese government statistics. The second most valuable market in 2009 was Singapore, worth US\$521 million, about one third of the size of Japan's market. See Figure 1 below.<sup>11</sup>



Estimates of the total number of foreign trainees in Japan range from the 150,000 cited above by JITCO to around 200,000, cited by the UN's Special Rapporteur on the human rights of migrants in his 2011 report on Japan. In 2008, the Special Rapporteur estimated, 67.6 percent of the trainees in Japan were from China, a figure backed up by China's International Contractors Association, which reported that at the end of June 2008, there were 149,876 Chinese citizens employed in Japan.<sup>12</sup> However, given the exodus of trainees after the 11 March earthquake and tsunami, it is difficult to establish an

<sup>11</sup> See *China Statistical Yearbook 2010*, Table 6-22 for more details.

<sup>12</sup> See 中国对外承包工程商会编中国对外劳务合作发展报告 2008-2009 (Report on the Development of China's Foreign Labour Cooperation, 2008-2009), compiled by 中国对外承包工程商 (China International Contractors Association), p. 29.

accurate figure for the number of Chinese trainees currently working in Japan.

Japan's pre-eminence as a market for China's labour, and the high proportion of Chinese workers in the Japanese trainee system, stems very simply from Japan's ever growing demand for cheap labour and China's increasing ability to meet that demand. Japan's demand for cheap manual labour began in the 1980s as its birth rate started to decline. The population aged and fewer younger workers were willing to engage in heavy and arduous manual labour. Small and medium-sized companies engaged in processing and manufacturing found it increasingly difficult to hire workers at home, and the Japanese government began to look overseas for a solution.

At the same time, the Chinese Communist Party and government embarked on a major transformation of the economy away from state planning and towards a free market. Reforms in the agricultural sector created a massive over-supply of rural labour. This excess labour pool swelled further in the late 1990s when around 30 million workers were laid off from state-owned enterprises. The development of the private sector, especially in the coastal provinces of Guangdong, Fujian and Zhejiang and around Shanghai, helped absorb a lot of this surplus but there was still a national over-supply of labour. More and more workers started to seek jobs overseas, aided by local governments which saw labour export as a way of resolving domestic unemployment and boosting revenue through remittances from abroad. The central government encouraged the development of labour export companies that could recruit and arrange the placement of workers overseas. By mid-2010, there were 982 such placement companies listed by China's Ministry of Commerce.<sup>13</sup> However, the actual number of firms engaged in labour export is much higher. There are hundreds, probably thousands, of unlicensed companies and individual sub-contractors who act as recruiters and middlemen for the larger licensed ones. The latest

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<sup>13</sup> See 外派劳务企业名单 (List of Foreign Labour Placement Companies), 中华人民共和国商务部对外经济合作司网站 (website of the Foreign Economic Cooperation Department, Ministry of Commerce).

available official statistics show that in 2009, China's labour export business amounted to US\$8.91 billion, up 10.6 percent from the previous year. Some 395,000 labourers were allocated work overseas that year, bringing the total number of workers abroad to 778,000.<sup>14</sup>

Both China and Japan are reluctant to admit that this profitable business is simply about the supply of cheap labour. The Chinese government, in a hangover from the era of state planning when it sent labour abroad to work on infrastructure projects in developing countries, especially those in Africa, still insists on referring to the process as "labour cooperation" (劳务合作) with recruitment and placement firms designated as "overseas labour cooperation companies" (OLCs).

In Japan, under the provisions of the *Immigration Control and Refugee Recognition Act* (referred to below as the *Immigration Control Act*), unskilled foreign workers are not allowed to work. In order to get around this problem and help resolve the country's labour shortage, the Ministry of Justice, in 1981, established the trainee visa category, allowing companies to accept foreign workers under the "foreign workers training system." In 1993, the Japanese government also added the "technical internship system."

### **Japan's trainee and internship system**

The Japan International Training Cooperation Organization describes a supposed win-win situation for employees and employers in its *Training and Technical Internship Manual for Trainees and Interns*:

The purpose of the Foreign Training and Technical Internship System is to develop young, able workers from various countries into human resources that can contribute to their national industries, by training them through transferring Japanese industrial and professional

<sup>14</sup> 2009 年我国对外劳务合作业务统计 (2009 Statistics on China's Overseas Labour Cooperation Business), 进出口经理人 (*Import-Export Executive*), Vol. 4 (2010).

knowledge, technology, and skills. In other words, the system assists trainees and interns by implementing training and technical internships that allow them to learn skills specific to Japan's industries and professions, and use them after returning home. The foreign companies placing trainees and interns can strengthen quality management, job discipline and cost consciousness, thereby increasing productivity. The accepting organizations in Japan can promote the activation and internationalization of their business activities.<sup>15</sup>

Under the provisions of the *Immigration Control Act*, trainees are supposed to receive both practical and non-practical training, the latter being a prerequisite for the former. Non-practical training includes Japanese language education; the basic knowledge, skills, and health and safety awareness needed for specific occupations; education related to the living environment and culture in Japan; the attitude required for practical training; and training in the production and sales of related products. Practical training is basically on-the-job training, with trainees supposedly mastering new skills and acquiring new knowledge. In reality, non-practical training is minimal and perfunctory at best and most time is spent actually working on site. In April 2010, JITCO listed 66 trades in such sectors as agriculture, fisheries, construction, food processing, textiles, and machinery and metal processing that could hire trainees.<sup>16</sup>

During their first year in Japan, trainees should receive a monthly "training allowance" of ¥60,000 to ¥80,000.<sup>17</sup> After 12 months, they undergo a skills assessment test and other evaluations. If they pass, their residency status will be upgraded and they can enter a two-year technical internship. According to the provisions of the

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<sup>15</sup> *Training and Technical Internship Manual for Trainees and Interns*, the Japan International Training Cooperation Organization (JITCO), p. 2.

<sup>16</sup> See 日本国际研修协力机构 (JITCO) 网站 (Website of the Japan International Training Cooperation Organization).

<sup>17</sup> For the sake of simple differentiation, throughout this report, currency amounts in Japanese yen will be preceded by the character "¥" and those in Chinese yuan will be followed by "yuan."

trainee system, technical interns should receive a monthly salary of ¥100,000-¥120,000. Based on these figures, Chinese trainees can earn the equivalent of more than 200,000 yuan by working in Japan for three years. This is also the income promised by most OLCs in their advertisements to recruit trainees.

As noted above, Chinese trainees now form the bulk of overseas trainees in Japan. According to JITCO, there were 68,150 foreign trainees (excluding interns) in Japan in 2008, of whom 54,889 were Chinese, 80 percent of the total.<sup>18</sup> At a local level, the proportion of Chinese trainees can be even higher. In Fukui prefecture, for example, 90 percent of the roughly 1,800 foreign workers in 64 companies were Chinese trainees, making up the bulk of the labour force in the region's fabric industry.<sup>19</sup> And in the mountainous vegetable-growing regions of Nagano prefecture, a village of only 4,000 people employed more than 700 trainees, some 500 of them from China. They received a training allowance of ¥80,000 per month, primarily for working during the lettuce harvest. According to one farmer, they had been unable to recruit Japanese workers, even by offering a monthly salary of ¥200,000.<sup>20</sup>

Until the Japanese Diet passed the amended *Immigration Control and Refugee Recognition Act* in July 2009, Japan's labour and tax laws did not apply to trainees, and the companies taking them on could not legally arrange for them to work overtime. Technical interns were, and still are, considered workers and are protected by Japan's *Labour Standards Law*, the *Minimum Wage Law*, the *Occupational Safety and Health Law* etc. As workers, technical interns must assume various obligations, including the payment of taxes, purchasing social insurance (health insurance and welfare

<sup>18</sup> Endo Hideko (远藤英湖) and A Muri (阿牧日), 问题不少出路何在? 日本专家详谈外国研修生现状 (Many Problems; Where is the Way Out? Japanese Experts Discuss the Status of Foreign Trainees) 中国新闻网 (Chinanews.com).

<sup>19</sup> A Nan (阿南), 中国赴日研修生投诉讨薪被开除 驻日使馆已介入 (Chinese Trainees in Japan Dismissed after Pay Complaint; Embassy Gets Involved), 广州日报 (Guangzhou Daily), taken from 新华网 (Xinhuanet.com).

<sup>20</sup> 中国研修生在日本村子: 成可以依靠的劳动力 (500 Chinese Trainees in a Japanese Village Become a Reliable Work Force), 中国新闻网 (Chinanews.com).



pension) and labour insurance, paying rent and so on. In addition, the companies accepting interns can require them to work overtime outside their normal working hours and on rest days.

In response to international and domestic criticism of the trainee system, and its abuse by Japanese employers, in December 2007, Japan's Ministry of Justice revised its *Management Guidelines on the Qualifications of Trainees and Technical Interns to Enter the Country and Attain Residency*. This was the first time the regulations had been revised since their adoption in 1999. The revised guidelines were designed to crack down on the so-called "improper behaviour" of employers. They clearly stated that employers could not restrict the freedom of trainees to come and go, or, for any reason, take custody of their passports, alien registration cards or passbooks. Other offences on the list of "improper behaviour" included withholding trainees' allowances or interns' wages, signing private contracts for lower wages, forcing trainees to work overtime and making hidden deductions from allowances and wages.

In addition to cracking down on employer abuses, the Japanese government also began to consider a more comprehensive reform of the trainee system. The Ministry of Health, Labour and Welfare recommended in 2007 that the one year of "training" should be abolished and that a unified, three-year technical internship system introduced. In June 2008, the Ministry reiterated its recommendation to repeal the one year of training and implement a three-year internship system to which laws such as the *Labour Standards Law* and *Minimum Wage Law* would apply.<sup>21</sup>

On 19 May 2009, the Ministry of Justice submitted amendments to the *Immigration Control Act* which made foreigners engaged in practical training in Japan subject to labour laws; uniformly changed

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<sup>21</sup> 日本将对研修生接收企业实施许可制 (Japan Will Implement Permit System for Companies Accepting Trainees), 中华人民共和国驻日本国大使馆经济商务参赞处网站 (website of the Economic and Commercial Counsellor's Office, Embassy of the People's Republic of China in Japan).

the visa for foreign trainees and interns to an “on-the-job training” visa; allowed foreign trainees to sign employment contracts with companies beginning in the third month, after studying Japanese for two months; and made Japan’s *Labour Standards Law* and *Minimum Wage Law* and other laws applicable to them. Japan’s parliament, the Diet, approved these amendments in July 2009 and the system was formally amended on 1 July 2010.

The new system is primarily designed to limit the ability of employers to use trainees as low-cost labour. Most Japanese commentators warned, however, that it could result in some small and medium-sized companies refusing to hire trainees. In a survey of 300 companies in Ehime prefecture, for example, about one third said they would no longer accept trainees or would reduce their intake. Around 75 percent of those respondents cited “increased costs” as the reason.<sup>22</sup>

### **China’s overseas labour cooperation system**

China’s Ministry of Commerce has the primary responsibility to develop and implement policies and procedures related to the promotion and regulation of labour export. In particular, the ministry is responsible for the certification and annual appraisal of overseas labour cooperation companies, regulations regarding the training of workers going overseas, management of the reserve fund which is supposed to ensure workers can be compensated if their overseas employer reneges on the contract, as well as other mechanisms designed to assist workers overseas.<sup>23</sup> The day-to-day management and supervision of placement companies, meanwhile, is done by provincial and other local governments. Specifically, local governments are responsible for reviewing overseas labour export

<sup>22</sup> 日媒：中国研修生大量减少将使在日华人增长钝化 (Japanese Media Reports Great Reduction in Chinese Trainees Stunts Growth Rate of Chinese Living in Japan), 中国新闻网 (*Chinanews.com*).

<sup>23</sup> See 中国对外劳务合作政策及管理体制 (China’s Overseas Labour Cooperation Policy and Management System), 中国对外承包工程商会网站 (China International Contractors Association website) for more details.

projects, monitoring the operations of placement companies in their jurisdiction, and coordinating and resolving problems as and when they arise.

Other governmental and non-governmental<sup>24</sup> authorities are supposed to coordinate and cooperate with the Ministry of Commerce, including the Ministry of Public Security, which handles the exit procedures for overseas workers; the Ministry of Foreign Affairs, to help with labour disputes and unexpected events such as natural disasters overseas; and the Ministry of Finance tasked with formulating the fee system for overseas workers.

Regulations related to the **fees and commissions** that placement companies can charge workers were first issued by the Ministries of Finance and Foreign Trade and Economic Cooperation in July 1995. The *Management Regulations for Overseas Economic Cooperation Enterprises on the Wages of Workers sent Overseas* allowed placement companies to deduct a certain percentage in management fees and handling fees from the wages paid to workers sent overseas. The total fees charged were not to exceed 25 percent of the value of the wage contract, and were to be used primarily to pay the costs incurred in organizing and managing the workers. But just 18 months later, in January 1997, the same two ministries issued *Supplementary Regulations*, which defined “management fees and handling fees” as “service fees” and stated that workers who had no employer or no longer had a labour relationship with their original employer prior to going overseas (the vast majority of workers) could not be charged a service fee of more than 12.5 percent of their contracted wage. The *Supplementary Regulations* stipulated that, in order to ensure that workers carried out their labour contracts, placement companies could collect a contract performance bond not exceeding 20 percent of their total contract wages. This latter stipulation however was repealed by the ministries in October 2003. The *Notice Repealing*

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<sup>24</sup> The China International Contractors Association, an industry group approved by the Ministry of Civil Affairs, also plays a key role in regulating and monitoring OLCs in specific industry sectors.

*the Performance Bond Collected from Workers sent Overseas by Overseas Economic Cooperation Enterprises* prohibited the collection of additional management fees and the requirement for workers to provide any other form of guarantee or collateral. The notice did however allow companies to demand that workers take out so-called “performance guarantee insurance.”

Prior to departure overseas, Chinese workers are supposed to receive **training and orientation** briefings. As early as in 1994, the Ministry of Foreign Trade and Economic Cooperation issued the *Interim Regulations for Implementing the Training of Workers sent Overseas*, which required placement companies to organize training for workers regarding the national laws, regulations, language and customs of the country they were being sent to. An August 2001 amendment to the regulations stipulated further that workers should receive no less than 40 class-hours of language training and at least 40 class-hours training in the laws, regulations, religion, and customs of the destination country. In addition, the Ministry of Commerce’s 2004 *Management Regulations on the Training of Workers sent Overseas* said enterprises certified by the ministry should provide appropriate training to workers prior to departure, such as familiarization with domestic and foreign laws and regulations, foreign affairs and the customs and everyday language of the host country or region. The regulations also required that provincial commerce departments establish “examination centres” in their area to issue a “training certificate” to the workers after they completed the training.

On the key issue of the **protection of overseas workers’ rights**, back in 1992, the Ministry of Labour issued a *Notice on the Proper Management of Labour Exports and Overseas Employment*, which indicated that the Ministry itself was responsible for protecting the legal rights and interests of workers sent overseas. Then in 1994, the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Labour issued the *Notice on Enhancing the Protection of the Legal Rights and Interests of Workers sent Overseas*, which stressed that, if the legal rights and interests of workers were violated, the placement company should negotiate with the overseas

employer according to the provisions of the contract and resolve the issue in a timely manner. And in 2001, the Ministries of Commerce and Finance issued the *Interim Regulations on Overseas Labour Cooperation Reserve Funds*, which required certified placement companies to pay into an overseas labour cooperation reserve fund, which was to be used exclusively to resolve emergency situations, such as bankruptcy of the overseas employer.

Then in June 2009, the Ministries of Commerce and Foreign Affairs issued the *Regulations on Preventing and Handling Overseas Labour Incidents*, which outlined the responsibilities of local governments, as well as embassies and consulates abroad, in handling overseas labour disputes. These regulations followed the principle of “whoever sends labour overseas is responsible” and required placement companies to bear full responsibility for handling overseas labour incidents, while the administrative authorities governing them assumed regulatory responsibility. The regulations also increased the responsibilities of embassies and consulates abroad, requiring them to maintain working contact and communications with government departments in the host country, listen to the demands of workers, and resolve their conflicts in a timely fashion.

Finally, in August last year, the State Council issued its *Opinion on Management Regulations for Overseas Labour (Draft for Comment)* which called for placement companies to establish a mechanism for the exchange of information between workers and their overseas employer, understand and resolve workers’ complaints in a timely manner, and require the overseas employer to address any violations of the contract, local laws or regulations. The draft also required placement companies with more than 100 workers in the same country or region, to have at least one manager at that site. Moreover, embassies and consulates should protect the legal rights and interests of both the placement company and its workers, help in the handling of labour disputes and emergencies, and extend consular protection for overseas workers.

The recently revised policies of the Chinese and Japanese governments should in theory improve the legal protection of Chinese trainees in Japan. However, as the following chapters show, the desire of Japanese employers for cheap labour and that of Chinese placement companies for profit have meant that laws and regulations designed to protect trainees are all too frequently ignored and the rights of trainees are routinely violated.



## Chapter Two: Going to Japan

As China Labour Bulletin showed in its earlier research report on Chinese workers in Singapore,<sup>25</sup> the primary motivation for those seeking jobs abroad is the prospect of a substantially higher income for themselves and their families. This was certainly the case for the workers interviewed by CLB for this report too. Ms Z and Ms Zh, both married women, explained:

Ms Z: The wages we earned at home were not high. The wages in the garment industry have never been high.

Ms Zh: Actually, we were tempted by the conditions set out by the placement company; they promised us that, after returning in three years, we would have at least 200,000 yuan in income... They didn't talk about taking out our expenses and so forth. But we made a comparison with our income at home, and certainly the income should be higher in Japan. At that time, working in Sichuan, we could earn about 2,000 yuan a month, but only by working overtime.

Ms Z: The whole garment industry in Sichuan is like that. We thought about ourselves, already 30-years-old. If we didn't go, how many more chances would we have? We thought it is better to grab this opportunity now. Going out to earn a little money, reducing the burden at home and also creating a better environment for our children: That's what we thought at the time.

Mr J, an unmarried man, thought it might be easier for him to earn a good income in Japan than at home.

At the time, it felt like it was harder and harder to earn money at home. I wanted to find a way to make more money, and that was to go abroad. This was a faster way

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<sup>25</sup> *Hired on Sufferance: China's Migrant Workers in Singapore*, available at the CLB website.



to earn money and you could also earn more; most young people have this mentality.

### **Pre-departure “training”**

Prior to going abroad, the trainees from Sichuan were required to take a two-part test, a practical skills test and an interview, mainly to assess their skill level. The primary purpose of the test was to discover if the candidate could meet the requirements of the prospective employer in Japan. Ms Zh explained:

The test was for the person sent over by the Japanese. As to the specific content of the test, he gave us some fabric and patterns, and gave us half an hour to make two pieces of clothing. After that there was an interview, with ten people in a group. After you went in, the people who came over from Japan would ask some questions, like how much money do you earn in one month in China, why do you want to go to Japan, do you have friends in Japan, do you have friends in China who were previously trainees there, and so on.

Other interviewees, such as Ms L, were asked about their family background and their character, whether they were an introvert or an extrovert etc., suggesting the Japanese employer wished to recruit people who were docile, hardworking and compliant.

Once they pass their test and are selected, the workers are supposed to receive training before leaving China. As noted in the previous chapter, the amended *Management Regulations on the Training of Workers sent Overseas* states that training should include classes on the relevant laws and regulations, religion, customs and language of the destination country. The interviewees, however, said much of the required content was missing from the training they received; in particular any training or instruction related to Japanese labour laws.

Rather, the interviewees pointed out, the placement company repeatedly emphasized all the actions that were prohibited while they were in Japan, and warned them of the consequences of violating rules and regulations. Ms T said:

They taught us to obediently toe the line; every day they talked to us about those things. It was like they were brainwashing us. They said that some trainees in the past had not obeyed. How they acted badly over there and then what happened to them, things like that. They also told you that if you know that someone is doing such things you must report it to the boss.

Ms L added: “They made us monitor each other. Those who did not toe the line would be punished.”

All the interviewees said the Japanese language training they received was completely inadequate and could not even meet the basic requirements for their work and social interaction in Japan. Ms Zh and Ms Z said their language training was at a school run by the placement company.

Ms Zh: There were five months of training, and two months of that was work. Some of the three months was vacation time, and other than that, it was learning Japanese.

Ms Z: But some of our study period was spent weeding in the school courtyard, or going out to put up flyers for the school. If we were learning Japanese, then we studied in the morning, and the afternoon was free.

Ms Zh: The time spent learning Japanese was generally 8:00 a.m. to 12:00 p.m. We should say that the Japanese we learned in China did not seem of any use in Japan, because it had little relationship to daily life.

Mr J was equally dismissive of his training:

I can't say we didn't get any training beforehand, but they were just going through the motions. According to the rules, the placement company should train us for three months, and they received 2,800 yuan in training fees from us, but they actually trained us for less than a month. The foreign language school that the company used was run by the younger brother of the boss. The Japanese teachers he gave us were not qualified teachers. I heard that the first teacher had not even passed the level two Japanese test. The second was a graduate student in Japanese, but he left before even teaching two days. And the third had just finished studying the 50 Japanese syllables. The training lasted just 21 days, and we had three teachers. They also told us about the laws of Japan, that is, their company sent a staff member over to tell us about them briefly, for two hours. This was the so-called training. We asked for a refund of part of our training fees but the company refused.

Most of the “skills training” period was in fact spent providing free labour to the placement company. Moreover, Ms Z and Ms Zh actually paid the company 200 yuan a month in living expenses at this time. Ms Z described how the sewing work they had to do at this time was of no value at all in terms of training:

Actually, we had been working in factories doing sewing work for many years already. There was no need for us to practice at all, so it seemed like the company was just using us as unpaid labour.

### **The cost of going to Japan**

All of CLB's interviewees expected to earn around 200,000 yuan during their three years in Japan. However, even before getting on

the plane to Japan, they had to pay the company that arranged their placement upwards of 20,000 yuan in fees, more than ten percent of their expected earnings. Ms Zh said:

We gave the placement company a total of 23,800 yuan. They said 20,000 yuan of that was the cost of going to Japan. They said 1,000 yuan was to find a sponsor for us; this money was not refundable. There was another 1,000 yuan for our living expenses during the training period, and the training cost was 1,800 yuan, which came to 3,800 yuan. Ten thousand of the additional 20,000 yuan was for an exit processing fee, and the other 10,000 yuan was for the plane ticket to Japan.

Mr J also had to pay around 20,000 yuan in various fees:

Before leaving, I first paid 13,000 yuan; they said it was the management fee for the first year; then I paid the exit procedure fee and the pre-departure training fee, as well as fees for other things, such as medical examinations, and so on. These were all out of my own pocket.

Most trainees going to Japan come from poor rural areas and their monthly wages at home are usually between 1,000 yuan and 2,000 yuan. As such, they nearly all have to borrow money from family and friends to pay the placement company charges. Most of the CLB interviewees borrowed 20,000 yuan. Mr J, however, had to borrow a total of 50,000 yuan and put his house up as collateral:

Some of these placement companies are really unscrupulous about charging fees. In the end, I had to borrow 50,000 yuan from relatives and friends; 30,000 yuan was for a “behaviour bond.” They feared that when we got to Japan, we would run away. So they made us first deposit 30,000 yuan with the placement company.

In addition to the deposit of 30,000 yuan, I submitted two photos of my house. Actually, only one house photo should have been required, but they required the area of the house to be no less than 120 square meters. My family's house is smaller than that so I had to take photos of two houses for collateral. In addition to the 30,000 yuan bond and two house photos, the placement company also made me find three sponsors, each depositing 5,000 yuan. If I found state civil servants, it was a little cheaper, and everyone would pay 3,000 yuan; if they were not state civil servants, each person had to pay 5,000 yuan.

Ms T also had to pay a performance bond and submit proof of sponsorship:

This was required; they feared that we would run away when we got over there or some other problem would come up, so they made us find a sponsor on our own. It was like this for the sponsors; if they were state civil servants, they did not have to pay. If not, they had to pay 10,000 yuan. This amounted to a security deposit. If you did not pay, you could mortgage property or something.

Mr J and Ms T both left for Japan in 2006, three years after the Ministries of Finance and Commerce banned the collection of performance bonds or any other form of guarantee or collateral from workers going overseas. Mr J and Ms T were not aware of the law and simply complied with the demands of the placement company because they thought that was the only way they could get a job overseas. None of the trainees had access to legal advice or any other way of checking the legality of their contracts. There is clearly a need for either a government or non-governmental body, such as the All-China Federation of Trade Unions, to set up a specialist unit that can advise and assist workers prior to signing their contract with the placement company and going overseas.

## Chapter Three: Working in Japan

### Living conditions

Most media reports on the plight of trainees in Japan have focused on their poor working conditions and wage levels. However, their daily living conditions also leave a great deal to be desired. Many Japanese employers are small family businesses, engaged in agriculture, garment-making and food-processing, often located in rural areas away from the cities or even deep in the mountains, leaving trainees effectively cut off from society.

The trainees interviewed by CLB all complained about the accommodation provided by their employer. Mr J, for example, was employed at a small meat processing plant in Ibaraki prefecture, and was put up, along with his colleagues, in an abandoned storehouse:

The placement company said living conditions would be pretty good in Japan. We'd sleep on a tatami mat, and the room would have a TV, air-conditioning and insulation. They said we would be able to cook for ourselves, with the factory owner providing kitchen utensils and crockery. We would be able to eat whatever we felt like, and we would not need to bring certain household items with us, and the boss would treat us well, and so on. Everything would be laid on.

But after we arrived, the company president took us to a storehouse by his home. There was a dog leashed there. He pulled the dog out, and told us to sleep there. We went in to have a look around. The room was full of muck and we had to clear it out with our own hands. The cooking pots and pans and crockery the boss gave us were all hand-me-downs, tossed into the yard and covered with dirt and sand. Of the things we were given, only the mattresses were new. The room did not have a television,

washing machine or refrigerator, and there was no place to shower. It was a month before we got a washing machine, refrigerator and TV. It also took 20 days to get washing facilities installed. The boss got a neighbour to fix these things up for us. That's how things were.

Later, the boss built us new sleeping quarters. This new place was better than the storehouse, but it was smaller and because we had to save space, it was built over a hallway, so it was only about six square metres. Three of us lived there, and each of us had about two square metres.

The interviewees from Chengdu, employed at a textile factory in Yamagata prefecture, faced similar conditions:

Ms L: The dormitory used to be a workshop, but after it fell into disrepair, the equipment was taken out and it was used to house us trainees. There was garbage everywhere and the wooden floors had sunk. There were 29 of us, and 23 were housed in that dormitory. It was probably not quite 40 square metres. We had bunk beds.

Ms Zh: There were two kerosene burners, which gave off warm air, and they were put on both sides of the dormitory.

Ms Z: But one of us was quite pushy and she put the heaters by her bedside. After that, everybody else was pretty cold... Also, we seldom slept well when it snowed because they brought in a snow shovelling machine. The rumbling started at four or five in the morning, so you could not sleep well however hard you tried.

The one thing that caused more dissatisfaction among the trainees than any other on a daily basis was the quality of the food. Ms L explained how the trainees could only afford to spend ¥10,000 each out of their wages each month for food, compared with the ¥20,000 per month spent by Japanese consumers on average:

The cost was deducted from our wages, and the boss pooled all the money and sent somebody to go and buy the food. We would pick items out from a list, and they would go to the supermarket and buy them. If they thought something was too expensive, or there wasn't enough money, they would cut out some of the items. They would buy food for us twice a week. I remember, one time we spent only ¥9,000 – just imagine how far ¥9,000 goes when you have to feed 29 people for three days.

Ms Z explained how the trainees repeatedly asked their boss for permission to buy their own food:

We said we could have done it ourselves. Whoever was on duty in a particular week could have sent out two people to buy food and the factory could have provided a car. Despite repeated attempts to persuade them, they never agreed. I think the boss was afraid that we would run away.

Eventually, the poor quality of the rice provided by the factory managers led to a minor revolt by the trainees. Ms Z and Ms Zh explained:

Ms Z: Some of the rice they bought for us was good quality but some was of an inferior grade, good and bad were mixed together... in order to save money.

Ms Zh: After a week of not being able to eat that rice, we showed it to our Japanese colleagues at the factory, and asked if they were eating the same kind of rice. They said they were not, and added that kind of rice was usually fed to pigs and chickens. In the end, we really could not eat it, and the boss had to back down and get us some better quality rice. This too was mixed into the rice we already had and eventually we managed to eat it. The reason we won this skirmish was because we had told the



Japanese factory workers about the problem, and the boss felt we had caused him to lose face. This made him very dissatisfied with us.

### **Working conditions**

In the late 1990s, a representative of a Chinese placement company in Japan stated that:

Japanese companies give less and less specific guidance on the practical training of trainees. Often it is a mere formality. In terms of the work environment, the industries receiving trainees have become progressively worse. They have gradually moved from training in labour-intensive industrial technologies to training in industries involving purely physical labour. The proportion of work in construction, casting, sewing, printing, binding, stone processing, welding, concrete and road paving has grown larger. At the same time, the “three K” jobs (dirty, demanding, and dangerous) are more prevalent and obvious.<sup>26</sup>

In the 2000s, working conditions for many trainees actually got worse. Mr J, for example, had two main tasks during his three-year stint at the meat processing plant – boning chicken legs and wings, and taking goods in and out of cold storage. Both tasks involved no training whatsoever:

One of the things we did was to work in the cold storage; this was the worst job. After we finished boning the chicken legs, we put them in the cold storage unit to freeze. After they were frozen we would go in to get them. This was a heavy physical job; the Japanese could

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<sup>26</sup> Zhang Xiangru (张翔如), 对日研修生派遣的现状与对策 (The Situation of Trainees Sent to Japan and How to Address It), 国际经济合作 (*International Economic Cooperation*), Vol. 2 (1999), pp. 23-25.

not or would not do it, so they assigned it to us. We were basically not allowed to do the light jobs; we had to do heavy work... We suffered most in the summer, when it got as hot as 35 degrees outside, really hot. As soon as we went into the cold storage it was minus 35 degrees, so we were particularly vulnerable to getting sick. Another thing is that sometimes a delivery to the plant would be 15 or even 20 tonnes, and there were only three of us trainees to unload it.

We would go in at 7:50 am and work until 11 o'clock. During the busiest times we worked in the cold storage for four hours. We wore padded cotton clothing but it was very thin, worn out and dirty. When we entered the cold storage, our hands and feet froze quickly until they were numb, and we couldn't even control them. There was no forklift in the cold storage; the forklift could not get in, so everything was moved by hand, and every crate weighed 20 kilograms.

It is not unusual for Chinese trainees to be reassigned to hard manual labour almost as soon as they arrive in Japan. Of the 449 enterprises identified by Japan's Immigration Bureau as having engaged in "improper behaviour" in 2007, for example, 115 made deployments under false pretences. Six female trainees from Hubei who were supposed to study the sewing of women's and children's clothing in Japan, were assigned by their Japanese employer to a laundry company washing overalls and gloves from electronics, pharmaceutical and chemical companies. All of them contracted either athlete's foot, nail fungus or chemical skin burns after being exposed to toxins over a long period of time. Another female trainee, who went to Japan in 2004, ended up cleaning and shining shoes at the home of the company chairman.<sup>27</sup>

<sup>27</sup> Liao Xiaojian (廖小建): 中外劳务合作与海外中国劳工的权益保护 — 以在日中国研修生为例 (Overseas Labour Cooperation and the Protection of Chinese Workers' Rights – The Case of Chinese Trainees in Japan), 亚太经济 (*Asia-Pacific Economic Review*), Vol. 4 (2009), pp. 91-95.

In May 2008, a court in Hangzhou heard four breach-of-contract dispute cases between trainees and their placement companies. According to one female trainee, their “training” in Japan consisted of filling sausages at a food plant. There was a thick, foul smell at the factory and the workload was extremely heavy. Even on lunch breaks and on Sundays, she said, the Japanese boss ordered them do weeding, dig trenches, wash the work shoes of the Japanese employees and clean heavy equipment.<sup>28</sup>

### **Wages, deductions and arrears**

Chinese trainees in Japan are routinely paid significantly less than local employees. Mr J, for example, pointed out that although trainees did the most onerous work in the factory, their overtime wages were always lower than local rates. The Chinese workers received a ¥60,000 per month training allowance in their first year, with overtime payments calculated at just ¥500 per hour. However, Mr J said:

In Ibaraki, the local minimum rate for overtime was ¥750 to ¥813 per hour. In the second year our wages did go up to ¥85,000 per month, and overtime pay was ¥800 per hour. But that year the overtime rate in Ibaraki went up to over ¥850, so we could never keep up.

Ms L said her wages of ¥70,000 in her second year were ¥30,000 lower than she had been led to expect, so she had to work overtime to make up the shortfall. However she was only paid between ¥400 and ¥450 an hour for overtime, slightly more than half the local minimum rate for overtime in Yamagata prefecture at the time.<sup>29</sup>

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<sup>28</sup> Gu Qizheng (古其铮): 浙江4名女研修生被仲介骗至日本, 不堪重负出逃 (Four Female Trainees from Zhejiang Deceived by Broker into Going to Japan, Flee to Escape Heavy Labour), 华商网 (*Hsw.cn*).

<sup>29</sup> According to documents from negotiations between the Gifu General Labour Union Foreign Branch, which represented the CLB interviewees, and the Japanese employers, the minimum overtime rate in Yamagata prefecture was ¥766 per hour in 2006; in 2007 it was ¥775 and, in 2008, ¥786.

The owner of a small garment-processing business in Aomori prefecture reportedly paid overtime to trainees at half the statutory local rate. He justified his actions by saying; “I was in a desperate situation and was forced to take in trainees. If trainees were to get wages equal to the statutory minimum wage, then I could not hire them. I would not be able to feed my family.”<sup>30</sup>

Even though the basic wages of trainees are already very low, many employers make additional deductions for food and living expenses, insurance payments and days off, or keep wages in arrears. In September 2008, for example, the Ashikaga branch of the Utsunomiya Public Prosecutor brought a case against the Japan-China Economic Association, including its executive director Shigeyasu Obuchi, a nephew of the former Japanese Prime Minister Keizo Obuchi. The Labour Standards Inspection Office alleged that since November 2004, Obuchi and others misappropriated about ¥100 million from the wages of 100 Chinese trainees in the three prefectures of Tochigi, Ibaraki, and Gunma, under the guise of group membership contributions.<sup>31</sup> And in January 2010, the *Guangzhou Daily* reported that the total wages owed to ten trainees from northeast China by a Japanese employer amounted to nearly 700,000 yuan.<sup>32</sup>

Interviewee Ms L described how, when she was sick, her employer made deductions equivalent to twice her statutory overtime pay:

Once I had a headache and my muscles ached; it was very uncomfortable, the pain was severe and I was nauseous. I told the boss that I wanted to go to the hospital. He said if

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<sup>30</sup> Zhu Jiushi (朱九思): 不堪超负荷劳动, 三中国在日女研修生逃出工厂 (Unbearably Heavy Work; Three Chinese Women Trainees in Japan Escape the Factory), taken from 新华网 (Xinhuanet.com).

<sup>31</sup> 日本前首相外甥私吞中国实习生工资 (Nephew of Former Japanese Prime Minister Misappropriates Chinese Trainee Wages), 广州日报 (*Guangzhou Daily*), 26 September 2008, p. A22.

<sup>32</sup> A Nan (阿南): 中国赴日研修生投诉讨薪被开除, 驻日使馆已介入 (Chinese Trainees in Japan Dismissed after Complaining about Back Wages; Embassy Gets Involved), 广州日报 (*Guangzhou Daily*), taken from 新华网 (Xinhuanet.com).

you feel uncomfortable, you can take sick leave. I thought that he was being kind, and I didn't ask if my wages would be deducted. I took three days off but when we were paid, I found that I had three days wages deducted, at double the rate of my overtime pay.

A report issued by the Gifu Labour Standards Inspection Office showed that in 2009, 64 of the 89 companies in the prefecture employing foreign trainees had engaged in illegal practices such as owing wages to trainees. In total, it said, 127 trainees were owed ¥45.47 million in back pay, or approximately ¥358,000 per person on average.<sup>33</sup>

The non-payment of wages for Chinese trainees in Japan largely stems from the collusion between Japanese employers and the Chinese placement companies. Trainees often have to sign a contract stipulating that the employer may withhold part of the trainee's income as a "security deposit". The contract signed by the Sichuan interviewees on 5 November 2006, for example, stated that:

In addition to the ¥25,000 in cash paid monthly to Party B (the trainee), the remaining wages will be deposited at a Japanese bank under Party B's name, and the passbook will be managed by Party B's assigned company, to be returned to Party B before returning to their home country.

The contract signed by Mr J with the Dalian XX Economic and Technical Cooperation Co. Ltd. stated that:

A monthly allowance and wages of ¥20,000 will be paid to Party B, and the remaining wages and overtime pay will be deposited by the host company on his behalf. If Party B does not violate certain clauses during the training

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<sup>33</sup> Li Peng (李鹏): 日本岐阜 64 家企业涉拖欠研修生工资逾 4 千万日元 (64 companies in Gifu, Japan Owe Over ¥40 Million in Trainee Wages), 中国新闻网 (*Chinanews.com*).

period, when Party B returns to his home country, the allowance and wages maintained by the Company on behalf of Party B shall be returned in full to Party B at the airport in Japan. While in Japan, if there is any violation whatsoever of certain clauses, the entire deposit shall be deducted as a penalty.

Mr J explained in more detail:

In the first year, it was not ¥60,000 per month; it was only ¥20,000 for living expenses, and the remaining ¥40,000 was deposited at the bank, so we did not see it. It was the same in the second year, ¥20,000 each month. After one million was saved up, the money left over could be paid directly to us. We were told at the time that the money was placed in the bank because they feared we would run away. After we returned home, the money would be paid to us.

The interviewees confirmed moreover that, even after the Ministry of Justice issued new guidelines in 2007 on the “improper behaviour” of employers, which outlawed the withholding of trainee’s personal documents, their employer did not return their passports or bank passbooks to them until the trainees were about to return home.

### **Working hours**

The legally permitted overtime in Japan is 15 hours in one week, 27 hours in two weeks, 43 hours in four weeks, 45 hours in one month, 81 hours in two months, 120 hours in three months, and 360 hours in one year. Most foreign trainees exceed these limits.

The most notorious case of overwork occurred on 6 June 2008 when Jiang Xiaodong, a trainee from Jiangsu, died of heart failure in his dormitory at an electroplating factory in the city of Itako, Ibaraki prefecture. He was just 31 years old. The local labour standards inspection office classified the cause of Jiang’s death as “overwork”

after determining that he had worked more than 100 hours overtime in the month prior to his death.<sup>34</sup> A lawsuit filed by Jiang's family on 4 March 2011 claimed that he in fact worked up to 180 hours overtime each month and was paid just ¥300 per hour.<sup>35</sup>

Jiang was far from being the only foreign trainee to die in Japan.<sup>36</sup> Nor was his excessive workload particularly uncommon. A survey of working conditions in Gifu prefecture showed that trainees often had to work Saturdays and Sundays and got less than one week off each year. In more extreme cases, trainees worked more than 160 hours overtime each month.<sup>37</sup> On the Shimabara Peninsula in Nagasaki prefecture, five Chinese women trainees at a lingerie company were forced to work 209 hours of overtime each month, or 2,000 hours of overtime per year. During the busiest times, they worked from 8:00 am to 12:00 midnight and sometimes had no rest days during the month.<sup>38</sup>

CLB's interviewees confirmed that excessive overtime was the norm. Ms Zh calculated that she and her colleagues worked "more than 900 hours of overtime in the first year, over 1,200 hours the second year, and in the third year we worked more than 1,100 hours of overtime."

<sup>34</sup> Zhang Zhe (张哲): 日本首次认定外国技能生过劳死 (Japan's First Determination of Overseas Intern's Death from Overwork), 法制日报 (*Legal Daily*), taken from 中国劳动保障新闻网 (*China Labour News Network*).

<sup>35</sup> Bereaved family of Chinese intern files damages suit, *Kyodo News*, 5 March 2011.

<sup>36</sup> According to figures released by JITCO, in the 12 months between April 2008 and March 2009, as many as 34 trainees lost their lives, 22 of them Chinese. Of the 34 who died, 16 suffered from heart- and brain-related ailments. Nine of these victims were from China, five of them not yet 30 years old. The report claimed the fatality rate among overseas trainees for heart- and brain-related ailments was double the corresponding ratio for Japanese of the same age group. See. Qiao Ju (乔聚). 日华媒披露中国研修生维权经历, 过程艰难曲折 (A hard and tortuous job: Media in Japan and China report the experiences of Chinese trainees in Japan), 中国新闻网 (*Chinese News Net*), 21 July 2009.

<sup>37</sup> Qiu Min (邱敏) and Zeng Xiangrong (曾向荣): 留日研修生调查, 无人身自由拿不到法定工资 (Survey of Trainees in Japan: No Personal Freedom, No Statutory Wages), 广州日报 (*Guangzhou Daily*), taken from 腾讯网 (*QQ.com*).

<sup>38</sup> Zhao Xueliang (赵学亮) and Yang Hong (杨虹): 中国女研修生在日本长期加班, 如厕算作休息 (Long-term Overtime for Chinese Women Trainees in Japan; Visiting Toilet Counts as Rest), 环球网 (*Huanqiu.com*), taken from 新浪网 (*Sina.com*).

Ms Z said:

According to the Immigration Bureau regulations, working on Saturday and Sunday should be considered overtime, but they only gave us Sundays. Japan also has statutory “red days” that are also considered overtime. The Immigration Bureau’s regulations said there should be 105 rest days each year, but the boss gave us only 80 rest days. If we worked on the other days it was not considered overtime.

Ms L often had to do several hours overtime in the evenings. However, much of that was paid at a lower rate:

After work, there was quite a bit of hand-stitching, sewing on buttons and the like. The wages for hand-stitching were rather low; calculated at piece rate. It was not as much as what you earned during the day. It was about ¥130 an hour. Sometimes there was more hand-stitching work and we had to do six or seven hours. Say we finished our shift at six or seven o’clock in the evening. We would then go home and do another five or six hours of hand-stitching until after midnight or one or two o’clock.

Mr J usually worked 11 hours a day and sometimes as many as 16 hours a day in his meat-packing plant: “During the busiest times when I was there, I would get up at 3:00 am and work until 8:30 in the evening... We had one rest day on Sunday, but had to work on Saturdays.”

### **Restrictions on personal freedom**

The contracts signed by the trainees with their placement companies in China often contained provisions restricting their personal freedom. Mr J’s contract, for example, stated that in addition to handing over his passport and wage deposit book to his employer



for “safekeeping,” he was not allowed to leave the town in which he was located during the holidays and non-work hours. Furthermore, if these provisions were violated, the trainee:

Will unconditionally accept the penalties given by Party A (the placement company) and the Japanese employer, including confiscation of the security deposit paid in the home country and the collateral property, and forfeiting the training fees and the portion of wages withheld in Japan.

In the “Trainee Placement Contract” signed by the interviewees from Chengdu, the punishment for “escaping” was that the placement company would pursue the sponsor(s) in China for ¥1,000,000 in damages and confiscate the trainee’s bank deposits in Japan. This contract defined “escape” as going out alone, leaving a group without authorization, or not returning to the company for more than two days. It also provided that a letter signed and stamped with the seal of the legal representative of the Japanese employer could be considered legal evidence of escape. This obviously gave the Japanese employer tremendous power over the trainees.

The contract signed by the Chengdu interviewees further stipulated that: “The trainee dormitory telephone number cannot be given out to people other than relatives, and no one outside the company can be brought into the dormitory. If a breach is discovered, Party A will fine Party B ¥100,000.” The contract also provided that, “if one needs to go out, it must be in a group of two or more,” and that “trainees from the same company must care for and help each other and monitor each other. If problems are identified, they should be immediately reported to the management in Japan.”

These restrictions placed a great strain on many trainees who already felt alone and homesick whilst in Japan. CLB’s interviewees said it was “very difficult” for them to communicate with their families back in China. Ms L said: “We had to use the factory phone that could only make calls and not receive them.”

Ms Z added:

We were away for several years. It was really a very lonely feeling. Sometimes when I wanted to talk to my family, I had to wait in line to make a call. There were 29 of us, and we each called home once a week; each call lasted at least half an hour... Sometimes we would have to wait until 1:00 in the morning.

Moreover, Ms Zh pointed out:

Our company had a rule that the dormitory phone could only be used to make calls to China. We had to buy our own card and that card could not be used to call people from our hometown in Japan; if they caught us, there would be a fine. So, to call a friend in Japan, we could only go to a public phone at a 24-hour convenience store.

### **The threat of forced repatriation**

Despite the widespread exploitation of trainees and the routine violations of their rights, labour disputes usually only flare up at the end of the three year traineeship. By this time, the trainees simply cannot take it anymore or feel that since they are leaving anyway, they might as well take a stand.

The reason trainees generally don't make a fuss beforehand is the ever-present threat of forced repatriation. The threat is real and can be used by employers to cower or intimidate trainees into toying the line. If trainees are repatriated, they can lose everything.

There are two situations that can result in the forced repatriation of a foreign trainee working in Japan. The first is when a Japanese employer breaks the law and is punished by the Immigration Bureau. The more severe punishment is the prohibition of the employer from taking in foreign trainees for three years and the repatriation of the trainees already at the company, as was the case in 2003, when some

700 trainees were repatriated after an investigation found 226 small and medium-sized companies in Japan's Kanto region guilty of bad management and abuses of the foreign trainee system.<sup>39</sup> Thus even when the employer is at fault, employees suffer loss of earnings after having their contract terminated early. Trainees have to accept the decision of the Immigration Bureau and cannot appeal.<sup>40</sup>

The second situation occurs when the Japanese employer deems trainees “unfit to continue the training or internship” and forcibly repatriates them to China prior to the expiration of their contract. This results in more serious losses for the trainees, including the loss of wages they would have earned up to the expiration of the contract, as well as the portion of the wages withheld by the employer during their time in Japan. After the trainees return home, the placement company may also use this “violation” as an excuse to recover their “costs”. Very often, trainees cannot get back the “security deposit” they paid to the placement company prior to leaving for Japan.

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<sup>39</sup> 日留学机构利用制度诈骗，700研修生遭遣返 (Japanese Foreign Study Organizations Defraud System, 700 Trainees Repatriated), 中新网 (*Chinanews.com*) at *Xinhuanet.com*.

<sup>40</sup> Liao Xiaojian (廖小建): 中外劳务合作与海外中国劳工的权益保护 – 以在日中国研修生为例 (Overseas Labour Cooperation and the Protection of Chinese Workers' Rights – The Case of Chinese Trainees in Japan), *亚太经济 (Asia-Pacific Economic Review)*, Vol. 4 (2009), pp. 91-95.

## Chapter Four: Disputes between trainees and employers

There does not appear to be a comprehensive and publicly available dataset for the number of labour disputes between overseas trainees and their Japanese employers. However, anecdotal evidence suggests disputes are not uncommon. In four prefectures including Tokushima on Shikoku Island, “overseas worker consultation offices” handled a total of 119 complaints, all from Chinese workers, in one year. More than half of these complaints concerned wage arrears or unpaid overtime.<sup>41</sup>

Another indicator of the number of labour disputes is the statistics released by Japan’s Ministry of Justice on the incidences of “improper behaviour” by firms employing overseas trainees. The Ministry cites eight categories of “improper behaviour,” including “covert deductions from allowances and wages,” in its *Management Guidelines on the Qualifications of Trainees and Technical Interns to Enter the Country and Attain Residency* issued in December 2007. That year marked a renewed crackdown on employer abuses and thus the number of cases uncovered almost doubled. See Figure 2 below.



The number of enterprises found guilty of improper behaviour jumped from 229 in 2006<sup>42</sup> to 449 in 2007.<sup>43</sup> And the number of specific cases of improper behaviour in 2007 reached 562. There were 549 specific cases of improper behaviour in 452 enterprises during 2008. Of them, 169 related to “working outside standard hours” and another 155 involved “violations of labour legislation,” such as the failure to pay the minimum wage.<sup>44</sup> In 2009, there were 444 cases of improper behaviour at 360 enterprises, including 123 “violations of labour legislation” and 121 cases of trainees working overtime at weekends and during the night.<sup>45</sup>

However, the above data falls a long way short of revealing the full extent of the abuses in the trainee system. CLB’s interviews showed that many employers were quite adept at covering up legal violations and keeping the inspectors at bay. Ms Z explained:

We arrived in Japan on 17 November. On the 18th, we had group training, and an important part of it was teaching us how to lie. This was because our wage level was far below the threshold required by Japan’s Immigration Bureau. That day, all the new arrivals in Japan were gathered together at a meeting place. There was a big screen, and then they told us what rules we had to follow.

<sup>41</sup> Zhang Yue (张玥). 日本四县一年涉中国研修生案逾百，劳资纠纷突出 (In four prefectures of Japan, more than 100 cases in one year involving Chinese trainees, labour disputes proliferate), 中国新闻网 (*Chinanews.com*), 30 November 2009.

<sup>42</sup> 日入管局：2007年度研修生接收企业违规案倍增为历史最高 (Japan’s Immigration Bureau: Number of cases of trainees suffering employer abuses doubles to record high), website of Economic and Commercial Counsellor’s Office, Embassy of the People’s Republic of China, 9 May 2008.

<sup>43</sup> 中国对外承包工程商会 (China International Contractors Association). 中国对外劳务合作发展报告 2008—2009 (Annual Report on China’s International Labour Cooperation 2008-2009), p. 31.

<sup>44</sup> Chen Huan (陈桓). 四百余日本企业对外国研修生存不正当行为 (Improper treatment of foreign trainees found at more than 400 Japanese companies), 中国新闻网 (*Chinanews.com*), at 腾讯网 (*QQ.com*), 10 April 2009.

<sup>45</sup> Liu Yixiang (刘怡祥) and Endo Eiko (远藤英湖). 华媒深度剖析华人过劳死事件，拷问日本研修制度 (Chinese media cover Chinese karoshi death in depth, and fiercely question trainee system in Japan), 中国新闻网 (*Chinanews.com*), 15 July 2010.

There were more than one hundred rules. At the time, we were told that if anybody from the Immigration Bureau or Labour Bureau came and carried out an inspection, we would have to tell them what they wanted to hear with regard to pay levels. For example, the standard monthly allowance for trainees in the first year is ¥65,000 and so we had to tell them ¥65,000. We were also briefed to say “no” if asked whether we did overtime. If asked whether we were doing hand-sewing, we had to say “no.” Right up to the end, the bosses forced us tell lies to keep the inspectors happy.

Ms Zh emphasized that: “The information the bosses gave us was all lies. They told us how to answer the Immigration Bureau’s questions. If one of them asked you “how much do you earn?” you would have to tell them the figure written down on the list.”

### **Options for trainees involved in labour disputes**

In early 2003, China’s Ministry of Commerce published a booklet entitled *What you Need to Know before Working Abroad*. The booklet was designed to “spread basic awareness about working overseas, to make sure that workers understand official overseas labour cooperation policies, clarify individual rights and obligations and help workers protect themselves better and increase their risk awareness.”<sup>46</sup> When workers “run into difficulties when working abroad,” the booklet outlines the following options:

You can negotiate with the employer with whom you have a conflict, under the terms of the employment contract you have signed with them. You can also take your complaint to the local authorities; or approach the management [placement] company or one of its local representatives and negotiate through them with the employer based on

<sup>46</sup> 出国打工用《出国劳务必读》(What you need to know before working abroad), 中国网 (*china.com.cn*), 21 January 2003.

the overseas labour cooperation contract with the employer, or you can take part in joint negotiations to resolve the issue. If any issues or disputes arise between you and the management company, you must negotiate a settlement based on the overseas labour cooperation contract signed by both parties, or seek settlement through the legal process based on the laws, regulations and policies of that country. In the case of major problems which cannot be easily resolved despite the best efforts of yourself and the management company, you can approach the embassy or consulate or their representative organisations, and ask them for help and advice.

In reality, however, nearly all of the options for aggrieved workers outlined in the ministry booklet are either non-existent or carry significant risk for the trainees. Many trainees are reluctant to take the first option, negotiating with their employer, because they fear losing their job and being forcibly repatriated. This, combined with the language barrier, makes it difficult for them to initiate direct talks with employers. Likewise, if they wish to seek help from the Japanese authorities, they are again hampered by the language barrier. Moreover they lack familiarity with Japan's institutions of redress and have their physical movements, use of telephone and the internet restricted by their employer. Although Japan has a sound legal system, some of the costs of filing a lawsuit have to be paid in advance. And this sum is high enough to make trainees think twice about going through the courts.<sup>47</sup>

Approaching the Chinese embassy or consulate to ask for advice or help is certainly feasible and does have precedents. In April 2009, China's Consul General paid a goodwill visit to Chinese trainees based in Fukushima,<sup>48</sup> and in January 2010, the embassy sent

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<sup>47</sup> Zhang Zhe (张哲). 海外维权新样本：中国工人加入日本工会 (A new model for worker rights protection overseas: Chinese workers join trade unions in Japan), 南方周末网 (*Southern Weekend website*), 21 October 2009.

<sup>48</sup> Jiang Feng (蒋丰). 中使馆‘关口前移’，看望研修生意义非凡 (Embassy “guarding the pass”: mission has special meaning for trainees), 中国网 (*china.com.cn*), 15 April 2009.

representatives to talk with ten trainees at a construction site who staged a public protest demanding the payment of wages in arrears.<sup>49</sup> But generally the embassy will only pay attention or intervene in disputes if the trainees themselves make the effort to contact it. Moreover, Chinese embassy officials in Japan claim they cannot represent individual workers or groups of workers in negotiations with the host government and that they can only ask enterprises and labour authorities to follow the law and safeguard worker rights as a matter of principle.<sup>50</sup>

This stance is reiterated in the *Guide to protection and services offered by overseas consulates of China*, published by the Ministry of Foreign Affairs in 2007, which states that consulate staff may not participate in the arbitration or settlement of economic, labour and other civil disputes. The *Guide* advises workers seeking redress for rights violations to:

Negotiate a settlement with the employer based on the contract and local laws and regulations. If agreement cannot be reached in this way, you can initiate litigation at a local court. You can also ask consular staff to provide a list of local lawyers and interpreters. Consular staff should be able to give you general legal information about the country.<sup>51</sup>

The final option of asking the placement company to intervene in the dispute is probably the least practical of all, and can actually lead to further violation of trainees' rights and interests after they return to China, as will be explained below.

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<sup>49</sup> A Nan (阿南), 中国赴日研修生投诉讨薪被开除 驻日使馆已介入 (Chinese Trainees in Japan Dismissed after Pay Complaint; Embassy Gets Involved), 广州日报 (*Guangzhou Daily*), taken from 新华网 (*Xinhuanet.com*).

<sup>50</sup> Zhang Zhe (张哲). 海外劳务纠纷的难题 (The difficulty of resolving labour disputes overseas), 南方周末网 (*Southern Weekend website*), 21 October 2009.

<sup>51</sup> See website of the Embassy of the People's Republic of China in Kenya.



## **Collusion between placement companies and employers**

Chinese and Japanese laws and regulations require placement companies to protect workers' rights and interests and to take the lead in settling labour disputes involving trainees, or assume the role of mediator.

Chinese law makes placement companies, certified by the Ministry of Commerce, responsible for ensuring that the terms and conditions of the employment contract are adhered to throughout the worker's tenure abroad. And the State Council's 2010 *Opinion on Management Regulations for Overseas Labour (Draft for Comment)* states that:

Companies involved in labour cooperation should establish channels of communication with service personnel and the overseas employer and promptly appraise and settle any complaints labourers may have; in the event that an overseas employer is found to be in violation of local laws and regulations, or has not met obligations under the employment contract, it should promptly require the overseas employer to remedy the situation.

In Japan, JITCO's *Handbook for Placement Companies in the Trainee and Technical Intern System* urges placement companies to acquire a good understanding of the situation of trainees and monitor whether or not the work being done complies with the terms of agreements signed by the employer. The handbook also recommends that caseworkers from the placement company regularly visit Japan and contact the trainees. If the number of such trainees is large, it urges the placement company to consider setting up a representative office in the area concerned. It also requires placement companies to give support to the families of trainees, including providing details of their health and living conditions in Japan.<sup>52</sup>

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<sup>52</sup> *Handbook for Placement Companies in the Trainee and Technical Intern System*, issued by JITCO, pp. 33, 41.

CLB's interviewees however said their placement companies paid little attention to these provisions and seldom got in touch with them after they left China. Indeed, the companies went out of their way to avoid having to deal with trainees' work-related issues.

Ms L explained: "We phoned them a number of times about our problems but they just said that it was our fault, we were in the wrong, and they would not settle any problem for us." Eventually, after trainees created a big enough fuss, company representatives did visit during a traditional Japanese festival.

They came over because we had really pressed them. At the time, they offered guarantees on, for example, how much overtime there would be and how they would ensure better treatment for us. But after they left, nothing changed. Things just deteriorated from day to day. At that time, we were feeling low. They had said they would sort things out for us, but in the end they just left us to it.

Mr J described the JITCO handbook requirement for placement companies to keep trainees' families informed of their progress in Japan simply as:

Fine words designed to fob us off. After we arrived in Japan, they made contact once, to tell my parents that I had arrived safely. After we started working and found out overtime was underpaid and not properly logged and how bad our lodgings were and all of these things, they did not tell our parents about this. Moreover, they said, if we did not want to work hard, we should go back home. That's how they were. They took no responsibility and did not look after our interests.

Chinese placement companies have a direct relationship and shared economic interests with Japanese employers. As such, when a labour dispute breaks out between trainees and employers, the placement

company in China will generally side with the employer and seek to muzzle trainee discontent. The ability of the placement company to ensure a steady supply of labour is, after all, the key to maintaining their good reputation with Japanese employers. The latter understand the position Chinese placement companies are in, and can push labour prices down. For a long time it has been a buyer's market and placement companies have led the race to the bottom in a bid to retain their share of the market. The victims in all of this, of course, are the trainees who are charged excessive fees by the placement companies and grossly underpaid by their Japanese employer.

Rather than coming to the aid of exploited trainees, placement companies will in most cases ignore their plight or sometimes intervene on behalf of the employer. A letter written by a trainee from Zhejiang to the *New Overseas Chinese in Japan News* (日本新华侨报) in July 2009, described how she and her two colleagues had taken their Japanese employer to court with the help of some Chinese and Japanese activists. When the placement company in China got wind of their dismissal, she said, it contacted them three times:

Each time was to persuade us to come back to China, using lies and intimidation. When they realized that we were going to court, they did not get in touch with us again. When we telephoned their representative, he would not take the call.<sup>53</sup>

After Chinese trainee Jiang Xiaodong (see previous chapter) died from overwork in June 2008, his sister repeatedly visited his placement company in Jiangsu, to discuss funeral arrangements, but was told trainees in Japan were covered by insurance, and that the company simply acted as a middleman. Later, the official Jiang's

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<sup>53</sup> Qiao Ju (乔聚). 日华媒披露中国研修生维权经历，过程艰难曲折 (A hard and tortuous job. Chinese and Japanese media report the experiences of Chinese trainees), 中国新闻网 (*Chinanews.com*), 21 July 2009.

sister talked to went into hiding and broke off mobile phone contact.<sup>54</sup>

When CLB interviewee Mr J sought help from his placement company to deal with his dispute over working hours, overtime pay, paid leave and other matters, he was told he was on his own:

They said it was no concern of theirs. They said that after we got to Japan, we no longer came under their management. They said that all they were responsible for was getting us to Japan, and other matters did not concern them. This was completely different from what they said before we came over. They really changed their tune. They also told us we could not win the lawsuit and that we were just being troublemakers. If we had any sense, we would quickly come back to China.

### **Another option – Japanese trade unions**

Although the official options for Chinese trainees seeking redress are of little use, there is an alternative (not listed in the official handbook) that has proved successful for some workers. Even though Chinese trade unions have done little to help Chinese workers overseas, local Japanese unions have often proved to be a willing and helpful ally.

Three trainees from Jiangsu, for example, approached a trade union in Fukuda after they got into a dispute with their employer in 2007. Within one month, the union won them more than ¥4.0 million in unpaid wages.<sup>55</sup> In 2009, five trainees working at a factory producing women's underwear in Nagasaki prefecture joined a local union,

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<sup>54</sup> Zhu Changzhen (朱长振). 赴日研修生蒋晓东的‘过劳死’调查 (Investigation into the karoshi death of overseas trainee Jiang Xiaodong), 中国商报网 (*China Business Herald Net*), 20 July 2010.

<sup>55</sup> Tian Lei (田磊). 赴日研修女生返乡记 (Female trainees in Japan describe their road home), 南风窗 (*South Wind Window*) (2007), 22, pp. 50-54.

which then engaged their employer in lengthy negotiations in order to resolve their dispute over forced and underpaid overtime.<sup>56</sup> And in October 2009, the first ever union for Chinese trainees was set up in the city of Tagajo, Miyagi prefecture, under the Sendai chapter of the Labour Council of Japan.<sup>57</sup>

CLB's interviewees from Chengdu likewise approached and eventually joined a trade union in Gifu prefecture. Ms Zh described how, despite being cut off from the rest of society in Japan, the trainees managed to get in touch with the union:

There was another member of our Chengdu community in some other Japanese city. We wrote to her about our situation, and she recommended that we approach the union and join it. Unlike us, she was able to go online and she found the website address and telephone number of this union for us. We used a convenience store phone to get in touch. Afterwards, this union executive was very proactive, and asked us to write him a letter explaining our situation in detail. Several of us wrote it all down. We told them about our wages and time-card system, how much overtime pay we got an hour, and how much we got per hour for our hand sewing. We listed it all in great detail.

The trade union then sent a special envoy from the foreign workers' chapter to negotiate with the Japanese employer. After several rounds of talks, their employer eventually paid out a total of ¥1.25 million.

However, Japanese trade unions cannot always help. Many Japanese employers discourage trainees from joining local unions, viewing such action as a serious breach of contract, and some take extreme

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<sup>56</sup> Sun Ying (孙盈). 在日中国研修生遭遇严冬, 维权案件明显增多 (Deep winter for rights of Chinese trainees in Japan: Abuses rise significantly), 中国新闻网 (*Chinanews.com*), 22 December 2010.

<sup>57</sup> *Ibid.*

measures to prevent such action. In May 2007, for example, five Chinese trainees working at a sewing factory in Ibaraki prefecture were forcibly repatriated after they joined a Japanese union. They had hoped the union could help them address their complaints over low pay and overtime, but after the union initiated talks with their employer, it sent the trainees back to China. On their return, the placement company refused to refund their 15,000 yuan deposits on the grounds that “they had joined a Japanese trade union in breach of contract.”<sup>58</sup>

Many Chinese placement companies explicitly forbid trainees from joining unions, or Christian churches in Japan. If trainees do join such organizations, their placement company will often demand they leave.<sup>59</sup> After the three above-mentioned trainees from Jiangsu joined a Japanese union, their placement company repeatedly told their family members that they had joined a “gangster organisation” (黑社会组织), and demanded that their families urge them to hurry back home, lest they bring serious trouble onto themselves in Japan and are unable to return. When the trainees did eventually return after winning their case, the placement company demanded 200,000 yuan each in compensation for “breach of contract.”<sup>60</sup>

## Returning home

Such treatment is not uncommon for trainees who have the courage and determination to stand up for their rights in Japan. They are often accused of jeopardizing the good relationship between the placement company and the Japanese employer, or of harming the placement company’s image. As a result, they find themselves being sued for damages.

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<sup>58</sup> Yasuda Koichi. 华人故事：在日中国女研修生加入工会后的遭遇 (A Chinese tale: What happened after some female trainees in Japan joined a union), translated from Japanese by Shi Shuang (石爽), 中国新闻网 (*Chinanews.com*), 7 September 2010.

<sup>59</sup> Zhang Zhe (张哲). 海外维权新样本：中国工人加入日本工会 (A new model for worker rights protection overseas: Chinese workers join trade unions in Japan), 南方周末网 (*Southern Weekend website*), 21 October 2009.

<sup>60</sup> Tian Lei (田磊). 赴日研修女生返乡记 (Female trainees in Japan describe their road home), 南风窗 (*South Wind Window*) (2007), 22, pp. 50-54..

When Mr J returned to China on 17 January 2010 in order to get a visa extension so that he could continue to fight his case against his employer, he was sued by his placement company. The grounds for legal action were that Mr J had not returned to China on the date stipulated on his contract, and this constituted a serious breach of contract. The company demanded 45,000 yuan in compensation.

When the four interviewees from Chengdu fell out with their employer towards the end of their contracts, they moved to temporary accommodation run by the local Japanese trade union that was helping them. This was done with the approval and knowledge of their employer, who even arranged vehicles to take their luggage to their new lodgings. But when they returned to China in November 2009, after settling with their employer, their placement company sued them in a Chengdu district court, claiming that they had:

Left their workplace without the approval of the plaintiff or the company they were employed at, which constituted an act of flight from the scene (逃逸行为), and should accept liability and pay compensation.

The compensation demanded was 70,000 yuan per head. After the placement company filed its claim, the court froze the trainees' bank accounts.

Because placement companies are seen by local governments as making a positive contribution to the economy in their jurisdiction, local governments have been known to put pressure on courts to rule in their favour.<sup>61</sup> This certainly seems to be the case in Chengdu. The judge told the lawyers representing the interviewees during the

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<sup>61</sup> Although Chinese courts are in theory separate from the government and Communist Party, they are in reality subordinate to the Party in political and ideological matters and often influenced by the local government that finances them in matters related to the local economy. Chinese court budgets, including judges' wages, are allocated by their corresponding level of local government administration, so that a county government will allocate funds to a district court and a municipal government will finance the intermediate court, etc.

proceedings that they would have to rule in favour of the placement firm precisely because that was what the local government wanted. If they had failed to punish the accused trainees, the judge argued, it would have a negative impact on the labour export business in the region and hinder the management of trainees in the future.<sup>62</sup> The judge ordered the defendants to each pay 30,000 yuan in compensation for breach of contract.

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<sup>62</sup> Interview with lawyers involved in the case (7 March 2010).





## Conclusions and Recommendations

*It is necessary to adapt to this new situation where large numbers of Chinese enterprises and workers are active abroad, and uphold the safety and lawful rights of Chinese organisations and workers overseas.*

Hu Jintao, President of the People's Republic of China<sup>63</sup>

*People in Japan are actually thinking that perhaps it would be better to receive more people for settlement rather than on a temporary basis.*

Chikako Kashiwazaki, associate professor of economics at Keio University<sup>64</sup>

The flight of Chinese trainees after the 11 March disaster led to much soul searching and debate in Japan about the foreign trainee system. Japan clearly needs foreign labour, now more than ever. Many Japanese are coming to the conclusion that if their country is to recover from the disaster, it needs to encourage long-term immigration rather than simply rely on foreign trainees – hired for just three years. After all, if workers have been exploited, cheated and deliberately excluded from Japanese society during their brief tenure, why would they stay to help when things go wrong?

Given the litany of complaints discussed in this report and summarized below, it should come as no surprise that many Chinese interns are reluctant to return.

- Japan's trainee system is in effect little more than a conveyor belt supplying cheap and temporary Chinese labour to Japan. Chinese trainees earn far less than their Japanese counterparts, they work excessively long hours and are employed in the dirty, demanding and dangerous "3K" industries Japanese workers shun.

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63 “中央外事工作会议在京举行，胡锦涛作重要讲话” (Hu Jintao makes key speech at Conference of the Foreign Affairs Office of the CPC Central Committee held in Beijing). 新华网 (*Xinhuanet.com*), 23 August 2006.

64 Drake Bennett, The Flight of Japan's Immigrant Workers, *BusinessWeek*, 21 April 2011.

- Although trainees do have better legal protection now, under the reforms introduced in 2010, they still do not enjoy the same rights as their Japanese co-workers. Moreover, employers can routinely violate the law and cover up such violations by forcing trainees to lie to labour inspectors about their pay and working conditions.
- During their three years in Japan, many trainees are effectively cut off from Japanese society. Many employers restrict the movement of trainees by withholding their passports and bankbooks and curtail their social interaction by banning the use of mobile phones and the internet. Moreover, a sizable proportion of the small and medium-sized enterprises employing trainees are located in remote rural, even mountainous, areas, making it almost impossible for trainees to make or interact with friends whilst in Japan.
- Isolated, unable to speak the language and lacking the legal awareness and knowledge needed to file a complaint against their employer, and fearful of losing their job, many trainees simply choose to endure their hardship in silence. When disputes do flare up, it is usually towards the end of their contract when grievances, bottled up for years, reach boiling point and the threat of losing their job and forced repatriation is no longer so potent.
- If a dispute does break out, under the current system, it is the Chinese agency that arranges the traineeship, the placement company, which is supposed to step in and resolve the dispute. However, given their dependence on Japanese employers for business, placement companies will normally ignore any complaints or advise trainees not to create a fuss.
- Prior to departure, placement companies usually demand fees and commissions of at least 10 percent of the expected three-year income. In addition, many demand a “security deposit,” and Japanese employers often withhold wages for “safekeeping”

in a bid to ensure trainees complete their contract in full and without causing trouble.

- If trainees fail to complete their contract or get into a dispute with their Japanese employer, they risk being sued by their placement company for breach of contract when they return to China.
- China's embassy in Japan has so far been ineffective in resolving disputes and Chinese trade unions are completely absent from the scene. The only real assistance for Chinese trainees has come from Japanese trade unions and activists.

Both the Japanese and Chinese governments have long recognised the flaws in the system and have sought to improve their laws, regulations and policies so as to provide Chinese trainees in Japan with better legal protection. In addition, both governments have to some extent sought to better regulate the system by cracking down on unscrupulous employers and exploitative placement companies. But the underlying economic reality is such that Chinese trainees will continue to be exploited for as long as placement companies in China ruthlessly compete with each other to supply ever cheaper labour to businesses in Japan, and employers in Japan take advantage of vulnerable trainees cut off from Japanese society, a long way from home and unwilling or unable to stand up for their rights.

As Japan enters a period of post-disaster reconstruction, there is a clear opportunity to start afresh and remedy the injustices of the past. In this regard, **China Labour Bulletin makes the following recommendations:**

- A positive first step would be for both Japan and China to sign and **ratify the three major international conventions related to migrant labour**;<sup>65</sup> ILO C97 *Migration for Employment Convention*, ILO C143 *Migrant Workers Convention*, and the

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65 See *Migrants' Rights are Workers' Rights*, the ITUC's map of countries which have ratified the three conventions.

United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. By ratifying these three core conventions, Japan and China would demonstrate their commitment to giving migrant workers the same rights and treatment as national workers in terms of wages, social security and trade union activities.

- **The Chinese government should consider drafting a new law specifically related to overseas labour.** Such a law should clarify the qualifications and activities of placement companies, the obligations of government departments, the mechanisms for resolving disputes as well as the contractual rights and obligations of workers and their placement company.
- **The Chinese government currently lacks the ability and often the will to enforce laws to protect workers' interests.** It needs therefore to **establish a new organization specifically tasked with monitoring and supervising China's rapidly expanding and increasingly chaotic labour export market.** It should ensure that placement companies abide by the law and punish severely any agency that fails to honour an agreement signed with a worker, or fails to protect the rights of the employees whilst they are abroad.
- **China's embassy and consulates in Japan,** as well as its missions in other countries with large numbers of Chinese migrant workers, should take a far more proactive role in helping resolve labour disputes involving Chinese citizens. The government should consider stationing an official at its embassies and consulates to specifically deal with labour issues.
- **Japan and China need to establish more effective information flows and channels of communication** so that when disputes do arise in Japan, trainees do not feel too isolated and have access to organisations and individuals who can provide assistance.

- There is a key role in the above-mentioned process for **China's trade unions**, which have so far been conspicuous by their absence from this report. The All-China Federation of Trade Unions should set up specialist units in regions sending large numbers of workers overseas in order to represent them in their negotiations with placement companies and ensure that their contracts are legal and contain no onerous clauses. This unit could also provide free legal advice and assistance to workers who are sued by their placement company on their return to China. In addition, provincial trade union federations in China should establish co-operative links with unions in Japan (and in other major labour importing countries) to help resolve disputes between the employer and employee as quickly as possible.

Chinese workers can make a valuable contribution towards Japan's economic recovery and development over the next few years. It is critical, however, that they be treated with respect, paid the same wages and have the same social security benefits as their Japanese colleagues and be allowed to play a full and productive role in Japanese society. If this does not happen and the old abuses, both in China and Japan, are allowed to continue, the goodwill towards Japanese employers generated in the immediate aftermath of the earthquake and tsunami will dissipate rapidly.

Moreover, if the Chinese government fails to properly regulate its labour export market and allows Chinese workers to continue to fall victim to illegal and exploitative practices, social discontent will only increase and the reputation of the government, trade unions and other bodies tasked with protecting workers' rights will only decline further.

## **CLB's Research Reports**

China Labour Bulletin is committed to promoting workers' rights, as well as raising international awareness and understanding of labour issues in China. To this end, we have produced an extensive series of Chinese and English language research reports that provide an in-depth analysis of some of the key labour rights issues in China today, and offer a series of recommendations designed to resolve the most pressing problems. Titles marked with an asterisk are available in a bound edition.

### ***English Language Reports***

#### **Hired on Sufferance: China's Migrant Workers in Singapore \***

An in depth examination of the problems most commonly faced by Chinese workers in Singapore, why Chinese migrants are often reluctant to file a complaint against their employer, and the difficulties faced by those that do.

Published February 2011

#### **The Hard Road: Seeking justice for victims of pneumoconiosis in China \***

Pneumoconiosis is by far the most widespread occupational disease in China but very few victims get anything like the compensation they are legally entitled to. CLB examines the issues and outlines a series of measures to improve workplace safety and that ensure workers' rights are protected.

Published April 2010

#### **Paying the Price for Economic Development: The Children of Migrant Workers in China \***

A special report on the plight of one of the most vulnerable and disadvantaged groups in Chinese society, the children of migrant workers, left behind in the countryside and discriminated against in the city.

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**Going it Alone: The Workers' Movement in China (2007-2008)\***

CLB looks at how the workers' movement in China developed in 2007 and 2008, how the government responded to it, and why the official trade union was unable or unwilling to play a positive role in it.

Published July 2009

**Protecting Workers' Rights or Serving the Party: The way forward for China's trade unions \***

The ACFTU has a mandate to protect the rights and interests of China's workers. However, as this report shows; the organization has become increasingly passive and subservient to its political masters over the last two decades, to the point where it is now unable to satisfy even the most basic demands of migrant workers - decent pay for decent work.

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**No Way Out: Worker Activism in China's State-Owned Enterprise Reforms \***

A joint-report with Canada's Rights and Democracy that reveals how the lives of millions of workers were thrown into turmoil during the wholesale, shock therapy-style privatisation of China's state owned enterprises in the late 1990s and early 2000s.

Published September 2008

**Bone and Blood: The Price of Coal in China \***

A report on the coal mining industry in China, which focuses on the industry's appalling safety record, the collusion between mine owners and local government officials, as well as the government's system of post-disaster management, which is systematically eroding the rights of the bereaved.

Published March 2008



### **Speaking Out: The Workers' Movement in China (2005-2006) \***

Following on from CLB's initial workers' movement report, this survey provides a comprehensive overview and analysis of the major events and developments in labour relations from 2005 to 2006. It discusses government labour policies, the response of China's workers to those policies and the role of the ACFTU.

Published December 2007

### **Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contracts Process**

An introduction to China's collective contract system that details the legal framework and practical implementation of the system so far, and advocates the use of collective bargaining as a means of promoting and protecting workers' rights, as well as improving relations between labour and management.

Published November 2007

### **Small Hands: A Survey Report on Child Labour in China and the Failings of the Rural School System in China \***

Child labour is a widespread, systemic and increasingly serious problem in China. This report explores both the demand for child labour in China and the supply of child labour stemming from serious failings in the rural school system.

Published September 2007

### **Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China \***

Migrant women workers in Dongguan and other key cities of the Pearl River Delta have consistently been denied their fair share of the rewards of China's rapid economic growth over the past decade. In this survey, Chinese women workers tell us in their own words about their arduous experiences of trying to earn a decent living in China's boomtowns.

Published September 2006

### **Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers**

The main focus of this report is on the labour rights litigation work undertaken by CLB during 2004-05 to assist jewellery workers who had contracted chronic silicosis to win fair and appropriate compensation from their employers.

Published December 2005

### **The Liaoyang Workers' Struggle: Portrait of a Movement**

A report on the landmark protests that occurred during the privatisation of state-owned enterprises in the north-eastern city of Liaoyang in 2002, and the subsequent trial and imprisonment of workers' leaders Xiao Yunliang and Yao Fuxin.

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### *Research Notes*

#### **Swimming against the Tide: A short history of labour conflict in China and the government's attempts to control it**

A short report that traces the development of labour relations during the reform era and examines precisely how, why and when the Chinese government effectively ceded control to the employers, with workers left out in the cold, marginalized and powerless.

Published October 2010

#### **Help or Hindrance to Workers: China's Institutions of Public Redress**

A report on the numerous problems in China's labyrinthine and often bewildering labour arbitration and court system that confront workers seeking redress for violations of their rights, particularly work-related illness and injury, and suggests ways in which these issues can be resolved

Published April 2008

## **Public Interest Litigation in China: A New Force for Social Justice**

One of the first English language overviews of the newly emerging field of public interest litigation (PIL) in China, the study examines the social, economic and legal background to PIL's development, shows its relevance to labour rights in China and introduces a range of illustrative cases.

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to Government and Business.

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## THROWAWAY LABOUR

### The exploitation of Chinese “trainees” in Japan

Japan is by far the largest international market for Chinese labour, valued at around US\$1.5 billion in 2009, three times the size of the second largest market in Singapore. The vast majority of Chinese workers are employed as “trainees” under a scheme first devised by the Japanese government in the 1980s to address its domestic labour shortage. China, with a huge labour surplus, has been able to meet Japan’s demand for trainees through the development of labour export companies placing large numbers of workers abroad. It is estimated that prior to the disastrous earthquake and tsunami of 11 March 2011, after which many trainees left, some 80 percent of the trainees in Japan were from China.

While Japanese employers and Chinese placement companies have benefited from the arrangement, the trainees themselves have not. Trainees have to pay excessive fees and commissions just to get the job and, once in Japan, are often forced to work long hours for low pay in frequently hazardous conditions. Their freedom of movement and association are severely constrained and the accommodation and food provided by their employer is often substandard. Moreover, they are often forced to lie to Japanese labour inspectors about their wage levels and working conditions. Chinese trainees in Japan usually put up with such conditions because they risk retaliation from their employer and their placement company if they file a complaint.

This China Labour Bulletin report analyses how this system for supplying cheap Chinese labour developed over the last three decades, examines in detail the problems trainees typically face, and offers suggestions on how the system might be improved. It provides a historical overview of the laws and government policies related to the export of Chinese labour to Japan, explains the process by which Chinese trainees are recruited and the fees they have to pay, provides a detailed picture of trainees’ living and working conditions in Japan and analyses the legal and practical options trainees have if their rights are violated by their employer or the Chinese company that placed them with that employer.

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Front cover photograph: People walk on a street at Tokyo's Ginza shopping district on 17 August 2009.  
AFP PHOTO/Kazuhiro NOGI.

中国劳工通讯

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